

BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of:

JAMES F. BATTIN, JR., FRIENDS OF JIM  
BATTIN, TAXFIGHTERS FOR JIM  
BATTIN, RAVELLE LYN GREENE, AND  
JAMES W. TRIMBLE,

Respondents.

FPPC No. 04/314

OAH No. N2006040207

**PROPOSED DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on June 19 and 20, 2006.

Assistant Division Chief William L. Williams, Jr., represented complainant Mark Krause, Executive Director, Fair Political Practices Commission.

Respondent James F. Battin, Jr., was present. Respondents were represented by Charles H. Bell, Jr., and Jimmie E. Johnson of Bell, McAndrews & Hiltachk, LLP.

The parties submitted a Stipulation of Facts and Law dated June 16, 2006. At the beginning of the hearing, complainant was allowed, with no objection from respondents, to combine counts 52 and 53 in the accusation into a single count 52, and to drop count 60 from the accusation.

The record was held open for the filing of post-hearing briefs. All briefs were timely filed by July 13, 2006, and the matter was submitted on that date.

**FACTUAL FINDINGS**

1. Complainant Mark Krause is the Executive Director of the Fair Political Practices Commission (FPPC). Complainant made the accusation in his official capacity.
2. Respondent James F. "Jim" Battin was elected to the California State Assembly in 1994. He was re-elected to the Assembly in 1996. He was again re-elected to the Assembly in 1998. Battin was elected to the California State Senate in 2000, representing

the 37th Senate District. Battin was re-elected to that office in 2004, and continues to serve in the Senate.

3. At all relevant times, Battin was a "candidate" for elective state office, as defined in Government Code sections 82007 and 82024.

4. Respondent Friends of Jim Battin (sometimes hereafter the "2000 Committee") was formed on or about September 21, 1998, originally under the name Golden State Republican Fund, as a candidate "controlled committee" within the meaning of Government Code section 82016, to support Battin's election to the state senate in the 2000 primary and general elections. The 2000 Committee's identification number, assigned by the Secretary of State, is 982715. Battin continued to use the 2000 Committee to raise funds after the 2000 elections.

5. Respondent Ravelle Lyn Greene was the treasurer of the Friends of Jim Battin from the date of its inception to on or about November 12, 2001.

6. Respondent James W. Trimble has been the treasurer of the Friends of Jim Battin since on or about November 13, 2001.

7. In 2001 and through September 2003, Battin had not decided whether he would run for re-election to the state Senate. He was interested in running for Congress if Representative Mary Bono decided to challenge Senator Barbara Boxer. The congressional and state Senate elections would not be held until 2004, and Battin did not decide on one race over the other until late September 2003.

8. After his election to the Senate, Battin continued to use the Friends of Jim Battin to raise funds through golf tournaments, breakfasts and other solicitations. These funds were deposited into the Friends of Jim Battin account and used for office holder expenses and to support other candidates. There was no showing that Battin or the other respondents misused the Friends of Jim Battin to support his re-election to the Senate.

9. In 2003, Representative Bono decided not to challenge Senator Boxer and instead ran for re-election to Congress. Battin thereafter decided to seek re-election to the Senate and, on September 23, 2003, signed a Candidate Intention Statement (FPPC Form 501). Battin's Candidate Intention Statement was received and filed with the Secretary of State on October 6, 2003.

10. Battin confided his political plans to Kimberly Glassman, his Chief of Staff and campaign manager. He first informed Glassman that he had decided to run for re-election to the Senate after Representative Bono decided to run for re-election to Congress.

11. Diane Stone of Diane Stone & Associates raises money for state and local candidates. She has worked for Battin since 1998. Battin did not ask Stone to raise funds to support his re-election to the Senate until late 2003.

12. Respondent Taxfighters for Jim Battin (sometimes hereafter the "2004 Committee") was formed on or about October 6, 2003, to support Battin's Senate re-election campaign in the 2004 primary and general elections. The 2004 Committee is a candidate "controlled committee" within the meaning of Government Code section 82016. James W. Trimble serves as the treasurer of the 2004 Committee, which has been assigned identification number 1259349 by the Secretary of State. The 2004 Committee opened its bank account on October 24, 2003.

13. At all times relevant to this matter, the 2000 Committee and the 2004 Committee were operated by a professional staff that included campaign manager Kimberly Glassman and fundraiser Diane Stone.

#### 2001 GOLF TOURNAMENT INVITATION – UNCERTAINTY OVER PROPOSITION 34

14. Over the years, Battin, through the Friends of Jim Battin, hosted fundraising golf tournaments. In early 2001, Battin began planning for "The Sixth Annual Jim Battin Desert Classic Golf Tournament" to be held June 1, 2001, in the Palm Springs area. The funds raised were to be deposited into the Friends of Jim Battin account, as in years past. The price to play in the tournament was \$1,500 per player, as it had been in the past.

15. Proposition 34, which amended the Political Reform Act (Gov. Code, § 81000 et seq.), was passed in the November 2000 general election. With the recent passage of Proposition 34, Battin was not certain whether Proposition 34's \$3,000 "per election" contribution limit (Gov. Code, § 85301) would apply to pre-Proposition 34 committees such as the Friends of Jim Battin. Battin was not alone in his uncertainty; Susan Swatt, who worked in the Legislature for 35 years and had worked with Senator Ross Johnson on campaign finance reform, noted there was general uncertainty in the regulated community about Proposition 34's effect on pre-Proposition 34 committees. In April 2001, the FPPC had not yet promulgated a regulation on this issue. Battin assumed, incorrectly as it turned out, that the \$3,000 per person per election limit would apply to pre-Proposition 34 committees. He and his campaign staff therefore decided to offer a "Proposition 34 Special" rate, under which players could pay \$3,000 and play in Battin's 2001, 2002, and 2003 tournaments; players under the Proposition 34 Special thus were able to play in three tournaments for the price of two and remain within Proposition 34's \$3,000 contribution limit.

16. Invitational brochures for the golf tournament were mailed in April 2001. The brochures set forth the date, location, and fees for the event. The fee schedule was as follows:

\$1500.00 per Player	\$250.00 for Five Mulligans
\$6000.00 per Foursome*	\$500.00 per Tee Sponsorship
\$3000.00 per Player Inclusive Rate for all Primary Election 2004 Tournaments	

- \* If you purchase a foursome, please let us know if you will be bringing four players, or would like to bring three players and host a Legislator.

The Proposition 34 Special was announced as follows (emphasis in original):

**Proposition 34 Special**  
**If you would like to pre-register for**  
**all of the Primary Election 2004**  
**Jim Battin Golf Tournaments (2001,**  
**2002 and 2003), you may donate the**  
**inclusive price of \$3000 per player**  
**and attend all three golf tournaments**  
**for the price of two.**

Included with the invitational materials was a remittance form that listed options for foursomes, individual entries, mulligans, and tee sponsorships. There was also the following option, which was for the Proposition 34 Special:

\_\_\_\_ Please reserve for \_\_\_\_ player(s) at \$3000.00 each for pre-registration for 2004 Primary Election Golf Tournaments.

Invitees were asked to make their checks payable to "Friends of Jim Battin" and to send those checks to "Friends of Jim Battin, P.O. Box 1565, Oakdale, CA 95361 (ID No. 982715)." Lyn Greene was listed as the Treasurer.

17. Although the invitational materials referenced Proposition 34 and the 2004 primary election, they did not announce that Battin was seeking re-election to the Senate. The words "re-election" and "campaign" did not appear in the invitational materials.

18. Around April 25, 2001, the Friends of Jim Battin received a \$6,000 check from the Soboba Band of Mission Indians as payment for one foursome in the June 1, 2001 golf tournament. Thereafter, the Friends of Jim Battin received checks for the golf tournament from numerous other contributors, including some that opted for the Proposition 34 Special rate.

19. In June and July 2001 meetings, the FPPC held policy discussions and voted to promulgate a regulation that allowed candidates to raise unlimited contributions into pre-Proposition 34 campaign committees, so long as those committees did not solicit or accept contributions for future, i.e., post-Proposition 34, elections. The regulation, sometimes referred to as the "Getman rule," was filed with the Secretary of State on October 4, 2001, and took effect on November 3, 2001. (Cal. Code Regs., tit. 2, § 18531.6.)

20. Battin held additional golf tournament fundraisers in 2002 and 2003. Because the FPPC had taken action clarifying that Proposition 34's contribution limits did not apply to pre-Proposition 34 committees, the invitations to Battin's 2002 and 2003 golf tournaments events did not reference Proposition 34.

NOVEMBER 15, 2001 RIVERSIDE PRESS ENTERPRISE ARTICLE; MARY BONO'S CONGRESSIONAL SEAT

21. Battin grew up in Virginia while his father served as a Member of Congress. Although Battin had been elected to the state Senate in 2000, and was eligible to run for re-election in 2004, it was an "un-kept secret" that he wanted to run for Congress and thus return to the Washington DC area.

22. Battin was specifically interested in running for the House of Representatives seat held by Mary Bono, a fellow Republican. There was speculation that Bono might run for the United States Senate as a challenger to Senator Barbara Boxer, the Democratic incumbent, in the 2004 election.

23. An August 26, 2001 editorial in the Desert Sun newspaper was titled "Mary Bono proves her political mettle." The editorial stated, "She's got what it takes and is recognized on the national political stage as a 'new favorite of the GOP' and a 'rising star in the Republican Party.'" The editorial mentioned Bono as a possible challenge to Senator Boxer in 2004. In August 2001, Battin had not decided whether he would run for Congress or for re-election to the state Senate.

24. About three months later, an article appeared in the November 15, 2001 edition of the Riverside Press Enterprise newspaper. The article was headlined, "Desert senator aspires to seat" and "BATTIN: The La Quinta Republican legislator lays the groundwork hoping to succeed Mary Bono." The article opened with these paragraphs:

Since late summer, state Sen. Jim Battin has taken little-noticed steps that buttress a growing perception: He's a politician to watch, prepping for bigger things.

First the desert Republican traded on good relations with Senate leaders and had his district redrawn so it sits on top of the congressional district of Rep. Mary Bono. She's a Palm Springs Republican Battin wouldn't mind succeeding.

Battin was quoted in the article, "Congress is certainly something that I'd be very interested in." Battin was further quoted, "[Bono] is doing a fine job and I'm not seeking her seat. If she chooses to stay, fine. I will gladly find something else to do with my life when I term out of the Legislature."

The article also quoted Assemblyman Dave Kelley, "He's playing in a lot of races and that's high-stakes stuff," and, "Battin's goal is to try and win a congressional seat."

The article noted other steps that enhanced Battin's Congressional prospects ("his district redrawn so it sits on top of the congressional district of Rep. Mary Bono," "recruited a staff aide to run for his old Assembly seat," "intervened in another Assembly GOP primary battle, pronouncing Palm Desert Mayor Jim Ferguson [and potential rival for Congress] an unacceptable choice," "last year's redistricting plan was highly favorable to Battin, leaving three other Senate districts with only slivers of Bono's 45th Congressional District. Battin represents most of it.")).

25. At hearing, Battin acknowledged the accuracy of the November 15, 2001, newspaper article.

26. Eight months after the Riverside Press Enterprise article, a July 22, 2002 article in the Desert Sun newspaper quoted Bono, "I'm not seriously entertaining [a challenge to Boxer], but I am not ruling it out either." The same article stated, "State political experts say it's too early to name a Republican frontrunner to challenge Boxer, especially before the November elections." Battin, for his part, had still not decided whether he would run for Congress or for re-election to the state Senate.

27. More than eight months later, an April 2, 2003 news article in the Desert Sun newspaper raised the question "What's next for Bono?" and stated, "Most of the recent mentions of Bono can be found in political stories about possible challengers to Sen. Barbara Boxer, D-Calif., in 2004. However, Bono's name has been brought up less in the past few months." The article quoted Bono, "There's a lot that would have to be considered (but) I haven't ruled it out." Battin had still not decided whether he would run for Congress or for re-election to the state Senate

28. By late September 2003, Bono decided to run for re-election to the House of Representatives. Battin thereafter decided to run for re-election to the state Senate and filed his Candidate Intention Statement. An October 11, 2003, news article in the Desert Sun newspaper was headlined, "Mary Bono will not be entering Senate race." The article quoted Bono, "I have zero desire to enter into this." The article noted, "Republicans and political pundits had promoted Bono early this year as one of the GOP's best hopes to take on Boxer, who has held her Senate seat since 1992. But Bono cited her rising seniority in the House, raising her two children, and the grueling amount of time and money it would take as reasons not to run for Boxer's seat."

AUGUST 21, 2002 CAFÉ DOLCE BREAKFAST AND DIANE STONE'S JULY 12, 2003 LETTER

29. Fundraiser Diane Stone organized an August 21, 2002 breakfast fundraiser for Battin at the Café Dolce restaurant in Sacramento. The invitations to the event did not reference Battin's re-election. There is no evidence that Battin's re-election to the Senate was promoted at the breakfast.

30. About 11 months after the Café Dolce breakfast, Stone sent a July 13, 2003 letter to James Greene of Verizon:

Dear Jim:

Thank you for your willingness to support Senator Jim Battin and his reelection campaign by participating in his August 21, 2002, fundraising breakfast held at Cafe Dolce Restaurant in Sacramento. According to my records, I was expecting the following contribution in conjunction with your participation:

Verizon - \$ 1000

I just wanted to let you know that we have not yet received that contribution.

Please make check(s) payable to: Friends of Jim Battin, P.O. Box 1565, Oakdale, CA 95361 (I.D. No. 982715). Enclosed for your convenience is a remittance envelope.

Thank you once again for your support of Senator Battin. If you need additional information, please do not hesitate to contact me at (209) 847-6200.

Sincerely,

[/s/] Diane  
Diane Stone  
Fundraising Consultant

The letter was on the letterhead of Diane Stone & Associates, Fundraising Consulting, and included Stone's Oakdale street address.

31. Stone acknowledged signing the letter, but did not recall its specific circumstances. At the time she sent the letter, Battin had not asked her to raise money for his re-election to the Senate. She used boilerplate language in the letter. Stone acknowledged that similar letters may have been sent to other slow payers but no similar letters are in evidence.

32. Battin did not review Stone's correspondence. Neither he nor his staff directed or authorized Stone's statement regarding Battin's re-election campaign. At the time Stone sent the letter Battin had not yet decided to run for re-election to the Senate. Battin did not become aware of Stone's letter until sometime in 2004, during complainant's investigation of this case.

**"EARMARKED" CONTRIBUTIONS**

33. Between April 25, 2001, and September 24, 2003, the Friends of Jim Battin received numerous contributions, including contributions that, either on the checks or in accompanying donor transmittal letters, included contributors' references to Battin's "re-election," "next primary election," "election campaign," "2002 election," "2002 Primary Election," "your 2004 primary election campaign," and similar comments. The parties refer to such references as "earmarks." Among the earmarked contributions were:

a. A May 25, 2001 letter from William H. Devine and Carolyn J. Veal-Hunter of AT&T accompanied a \$1,000 contribution. Devine and Veal-Hunter wrote, "Please find enclosed \$1,000 contribution to the 'Friends of Jim Battin Committee' from AT&T." They also wrote, "AT&T is pleased to have the opportunity to continue to support your re-election."

b. A June 5, 2001 letter from the Associated General Contractors Political Action Committee accompanied a \$1,000 contribution. Also enclosed with the contribution was a letter from J. Richard Eichman, Certified Public Accountant, dated "June 2001." The Eichman letter bore the salutation "Dear Candidate/Treasurer:" and stated, "Pursuant to the requirements of Proposition 34 and your solicitation for a contribution I assume that you have done the following: 1) Filed a Form 501, Candidate Intention Statement, for a future election, and 2) Designated a committee to accept contributions in accordance with the requirements of Proposition 34. [new paragraph] If you have not completed the above items, please return the contribution check to me."

Other contributions received by the Friends of Jim Battin included letters from Eichman that were similar to the one that accompanied the Associated General Contractors Political Action Committee's contribution.

c. An August 29, 2001 letter from Alan L. Lippincott, Director, California Government Relations, BP Amoco, accompanied a \$3,000 contribution. Lippincott wrote, "We are happy to provide this support to your 2004 primary election campaign for re-election to the State Senate."

d. A September 24, 2001 letter from Patricia A. Tilson, Manager, Legislative Affairs, Burlington Northern Santa Fe, accompanied a \$1,000 contribution. Tilson wrote, "On behalf of Burlington Northern Santa Fe, I am happy to enclose a \$1,000.00 check for the 2002 Primary Election."

e. A February 28, 2002 letter from Michael G. Jackson, Director – California Government Relations, The Boeing Company, accompanied a \$1,000 contribution. Jackson wrote, "Enclosed please find a contribution of



\$1,000.00 from The Boeing Company to be used in support of your Senate campaign for the March 5, 2002 Primary Election.”

f. An April 15, 2002 letter from attorney John Kelly Astor accompanied a \$1,500 contribution from the California Refuse Removal Council South PAC. Astor wrote, “I am pleased to enclose the California Refuse Removal Council South PAC’s check No. 1060 in the sum of \$1,500.00, in support of your campaign for Senate. This contribution is designated for the Primary Election 2004.”

On September 16, 2005, attorney Astor executed a declaration under penalty of perjury stating that prior to composing his April 15, 2002, message he had never: spoken to Battin regarding a re-election campaign; received any information stating or inferring that Battin was running for re-election or had made a decision whether to run for re-election; been instructed by the California Refuse Removal Council South PAC to include the campaign and election language in the April 15, 2002 letter; or, been instructed by the California Refuse Removal Council South PAC that the contribution was in support of Battin’s re-election campaign. Astor further declared that the inclusion of campaign and election comments in the letter was solely the product of using a boilerplate form letter when composing the message.

g. An August 17, 2002 letter from Patricia A. Tilson, Manager, Legislative Affairs, accompanied another \$1,000 contribution from Burlington Northern Santa Fe. Tilson wrote, “On behalf of Burlington Northern Santa Fe, I am happy to enclose a \$1,000.00 check for the 2002 General Election.”

h. An October 12, 2002 letter from Chuck Helget, President, Sector Strategies, accompanied a \$1,000 contribution on behalf of Helget’s clients Allied Waste Industries, Inc. and Browning-Ferris Industries. Helget’s letter was addressed to “Jim Battin, Friends of Jim Battin, Citizens for Bob Margett, 8364 Clairmont [sic] Mesa Blvd., San Diego,” and bore the identification number 982715. Helget wrote, “On behalf of my client Allied Waste Industries, Inc. and Browning-Ferris Industries, I am respectfully presenting the attached \$1000 contribution for your reelection campaign. We are pleased to be able to provide you with our support during the 2002 General Election.” The check was payable to “FRIENDS FO [sic] JIM BATTON [sic]” at 8364 Clairemont Mesa Boulevard, San Diego, which was the Margett campaign’s address. The Margett campaign received the contribution and forwarded it to the Friends of Jim Battin.

i. A March 31, 2003 letter from J. Hartley Turpin, M.D., Trust Legislative Committee, Cooperative of American Physicians, accompanied a \$1,000 contribution. The letter was addressed to “Assemblyman Jim Battin.”

Turpin wrote, "On behalf of the Cooperative of American Physicians, I am pleased to forward this contribution for your efforts in the State Assembly."

j. A May 7, 2003 letter from Charles G. Johnson, Vice President, Colmac Energy, accompanied a \$5,000 contribution. Johnson wrote, "Enclosed please find a check in the amount of \$5,000 from Colmac Energy, Inc., as a contribution to your re-election campaign."

An October 18, 2004, letter from Johnson to Battin clarified the language and intent of Johnson's May 7, 2003 letter. Johnson stated that the Colmac Energy had used a standard format transmittal letter and that the contribution and an earlier June 22, 2001 contribution were not specifically for any "election or re-election campaign" and were made "when you were not campaigning for any election or re-election."

Other contributors made similar statements in connection with their contributions. No contributor testified at the hearing. The circumstances that led these contributors to make these comments are unknown. The letter from attorney John Kelly Astor on behalf of the California Refuse Removal Council South PAC and the letter from Colmac Energy suggest that earmarks may have been included by inadvertence or the use of political contribution form letters.

34. The large majority of checks received by the 2000 Committee, including those accompanied by earmarks, were payable to the Friends of Jim Battin. Many also included the Friends of Jim Battin identification number, 982715.

35. A few checks received by the 2000 Committee were payable to non-existent accounts such as the "JIM BATTIN ELECTION CAMPAIGN," "Campaign for Jim Battin," and "FRIENDS FO [sic] JIM BATTON [sic]." The letter that accompanied the "FRIENDS FO JIM BATTON" contribution bore the 2000 Committee's identification number, 982715. The circumstances that led these contributors to use these terms are unknown; none of these contributors was called as a witness.

36. Battin was not eligible to run for re-election to the Assembly in the 2002 elections; he had already "termed out" of the Assembly. Nor could Battin be a candidate for re-election to the Senate in the 2002 elections; having been elected to the Senate in 2000, he was eligible to run for re-election in the 2004 elections.

37. Battin did not become aware of the donor transmittal letters, or their comments about the 2002 and 2004 elections, his re-election, the next primary election, etc., until complainant's investigation into this case.

## FINDINGS REGARDING ACCUSATION COUNTS 46 – 50

38. On or about October 13, 2003, the Twenty-Nine Palms Band of Mission Indians made a \$12,500 contribution to the Friends of Jim Battin. It was not established this contribution was used to support Battin's Senate re-election campaign.

39. On or about October 16, 2003, the Agua Caliente Band of Cahuilla Indians made a \$75,000 contribution to the Friends of Jim Battin. It was not established this contribution was used to support Battin's Senate re-election campaign.

40. On or about October 22, 2003, the San Manuel Tribal Administration made a \$75,000 contribution to the Friends of Jim Battin. It was not established this contribution was used to support Battin's Senate re-election campaign.

41. It was not established that the Friends of Jim Battin's semi-annual campaign statement, filed on or about January 12, 2004, for the reporting period January 1 through December 31, 2003, failed to properly report contributions totaling \$164,500 received during the reporting period.

42. It was not established that the Taxfighters for Jim Battin's semi-annual campaign statement, filed on or about January 12, 2004, for the reporting period January 1 through December 31, 2003, failed to properly report contributions totaling \$164,500 received during the reporting period.

## LEGAL CONCLUSIONS

1. In their Stipulation of Facts and Law, the parties agreed:

The determinative disputed issue in this matter is whether Respondent James F. Battin, Jr., violated the Political Reform Act by failing to timely file a statement of intention to become a candidate for the 2004 State Senate Election, as alleged in Count 1 of the Accusation. If that issue is determined in favor of Complainant, it is stipulated that the alleged violations of the Political Reform Act as set forth in Counts 1 through 61 in the accusation are factually and legally valid as to all Respondents, and the only issue is the appropriate remedy. If that issue is determined in favor of Respondents, it is stipulated that the alleged violations of the Political Reform Act as set forth in Counts 1 through 45 and 51 through 61 are not legally and factually valid. In entering into this stipulation as to this determinative disputed issue, neither party waives or otherwise compromises his/her right to fully challenge the Administrative Law Judge's determination of this issue, legally and/or factually, and the resultant findings as to all of the alleged

violations before the Commission itself upon consideration of the proposed decision in this matter, or in subsequent judicial review proceedings. Provided: even if it is determined that Respondents were not required to file a statement of intention to be a candidate until October 6, 2003, the administrative law judge may consider whether contributions received and deposited in the Friends of Jim Battin after that date would sustain the violations of the Political Reform Act as set forth in Counts 46-50.

Thus, the first issue to be considered is Count 1 of complainant's accusation.

2. Count 1 alleges that Battin received a \$6,000 contribution from the Soboba Band of Mission Indians on or about April 25, 2001, and that Battin received 146 contributions totaling \$249,900 between April 25, 2001, and September 24, 2003, all prior to filing a statement of intention to be a candidate (FPPC Form 501 – Candidate Intention Statement) in the 2004 election. Complainant alleges, "By failing to file a statement of intention to be a candidate for state senate in the 2004 primary/general election prior to soliciting and receiving contributions for that specific term of office, Respondent Battin violated [Government Code] section 85200."

It is not disputed that Battin received the \$6,000 contribution from the Soboba Band of Mission Indians on or about April 25, 2001, or that Battin received other contributions between April 25, 2001, and September 24, 2003, prior to his filing a statement of intention to be a candidate for the Senate in the 2004 elections. What is in dispute is whether Battin intended to be a candidate for the state Senate in the 2004 elections when the contributions were received.

Government Code section 85200 provides that prior to the solicitation or receipt of any contribution or loan, "**an individual who intends to be a candidate** for an elective state office" shall file a statement of intention to be a candidate for a specific office with the Secretary of State. (Emphasis added.)

Complainant downplays the intent requirement in Government Code section 85200. Citing California Code of Regulations, title 2, section 18520, which implements section 85200, complainant argues:

[R]egulation 18520 does not even mention the candidate's **intent as a requisite** for filing of a statement of intention, but rather **focuses solely on the "solicitation or receipt of any contribution or loan for a specific office," as the triggering event** for filing a statement of intention, **implicitly presuming that such solicitation or receipt of contributions for a specific office in itself establishes intent to run.** (Regulation 18520,

subd. (a) [sic].<sup>1</sup>) Again, this implementing regulation strongly indicates that **there is no formal threshold for a candidate's intent to run** before he/she is required to file a statement of intention. [Emphasis added.]

Complainant misreads regulation 18520. The sentence from which complainant quotes states (Cal. Code Regs., tit. 2, § 18520, subd. (b)):

Prior to the solicitation or receipt of any contribution or loan for a specific office, **the individual** must file a statement, signed under penalty of perjury, of intention to be a candidate for the specific office. [Emphasis added.]

The term “the individual” is pivotal. “[T]he individual” specified in the regulation can only be, in the words of the statute, the “individual who intends to be a candidate” (Gov. Code, § 85200). Contrary to complainant’s assertion, regulation 18520 does not include any implicit presumption or indication (strong or otherwise) that the statute’s intent requirement is to be negated or minimized. The regulation does not focus solely on the solicitation or receipt of contributions or posit such as a triggering event. Instead the regulation, like the statute it implements, is focused on the individual who intends to be a candidate.

3. In a similar vein, complainant argues “[Government Code] section 85200 does not require intent to solicit or receive contributions to establish a violation, just whether Respondents caused such triggering events to occur in an objective sense.” Citing California Code of Regulations, title 2, section 18361.5, subdivision (d)(3), complainant maintains a violation can be “deliberate, negligent, or inadvertent.” That may be true as to other provisions of the Political Reform Act, but not as to Government Code section 85200.

Regulation 18361.5 pertains to the conduct of administrative hearings before the FPPC. Subdivision (d) sets forth a list of factors to be considered by the FPPC and administrative law judge in framing a proposed order “following a finding of a violation pursuant to Government Code section 83116.” Among that list of factors is subdivision (d)(3), “Whether the violation was deliberate, negligent or inadvertent.” On its face subdivision (d) comes into play “following a finding of a violation;” it does not purport to provide substantive guidance as to when a violation should be found. Moreover, nothing in subdivision (d)(3), or regulation 18361.5 generally, refers to Government Code section 85200. Neither subdivision (d)(3), nor regulation 18361.5 generally, removes or weakens the intent requirement in Government Code section 85200. Section 85200 specifically applies to “an individual who intends to be a candidate.” It does not encompass the negligence or inadvertence theories proffered by complainant.

4. Complainant contends that the November 15, 2001 Riverside Press Enterprise article (Factual Finding 24) is “[p]erhaps the most probative evidence of Respondent Battin’s

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The phrase quoted by complainant is found in section 18520, subdivision (b), not subdivision (a)

intent to run for reelection to the State Senate.” Complainant points to the following passage in the article:

... The state Senate’s youngest member, Battin noted that he could serve seven more years in the Legislature and can afford to be patient.

“Congress is certainly something that I’d be very interested in,” he said. But Bono “is doing a fine job and I’m not seeking her seat. If she chooses to stay, fine, I will gladly find something else to do with my life when I term out of the Legislature.”

Complainant asserts the above passage “clearly shows Respondent Battin’s intent to remain in the State Legislature and run for reelection in 2004.” The overall thrust of the article, however, was Battin’s interest in and preparation for a Congressional run (“Battin’s goal is to try and win a congressional seat,” “his district redrawn so it sits on top of the congressional district of Rep. Mary Bono,” “last year’s redistricting plan was highly favorable to Battin, leaving three other Senate districts with only slivers of Bono’s 45th Congressional District. Battin represents most of it,” etc.). Contrary to complainant’s assertion, the article reinforces Battin’s and other witnesses’ testimony that Battin was interested in running for Congress and had not decided in 2001, and through September 2003, to run for re-election to the Senate. Battin kept his options open until September 2003.

5. Complainant contends that the April 2001 invitational brochure (Factual Findings 15, 16, and 17) for the June 1, 2001 golf tournament demonstrates Battin’s intent to run for re-election to the state Senate in the 2004 primary election. Complainant specifically notes that the brochure referenced Proposition 34, “Primary Election 2004.” Complainant asserts, “[A]ny reasonable person reading the above language would objectively believe that Respondent Battin intended to run for reelection to the State Senate in 2004.” At hearing, complainant presented no witness who testified to such a belief.

Respondents note that the invitational brochure notified the recipients that contributions from the event went to the pre-Proposition 34 committee, Friends of Jim Battin, that all the contributions received were deposited into the Friends of Jim Battin account, and that all the funds deposited into the account were spent on officeholder expenses and contributions to other campaigns. (Factual Finding 8.) Respondents note that the invitational brochure nowhere used the terms “re-election” or “campaign.” (Factual Finding 17.) Moreover, Battin’s testimony, and that of respondents’ other witnesses, explained that the Proposition 34 Special rate was included because Battin assumed (incorrectly, as it turned out) that Proposition 34’s contribution limits would be applied to pre-Proposition 34 accounts. Respondents’ witnesses’ testimony on this point was credible and persuasive.

When the 2001 golf tournament invitations were mailed in April 2001, there was uncertainty in the regulated community about the applicability of Proposition 34’s

contribution limits to pre-Proposition 34 committees. (Factual Finding 15.) This uncertainty was resolved when the FPPC, later in 2001, decided that those contribution limits did not apply to pre-Proposition 34 committees. (Factual Finding 19.) The FPPC having clarified the issue, Battin's 2002 and 2003 golf tournament invitations no longer referenced Proposition 34. (Factual Finding 20.)

The 2001 golf tournament invitational brochure did not demonstrate Battin's intent run for re-election to the Senate in the 2004 elections.

6. Complainant asserts that the "clear import" Diane Stone's July 12, 2003 letter was that Battin was "running for his 2004 reelection on an ongoing basis." Stone thanked Verizon's James Greene for his "willingness to support Senator Jim Battin and his reelection campaign." (Factual Finding 30.) Stone's letter was sent without Battin's or the other respondents' instruction, authorization or knowledge. The language in question was erroneous and inadvertent. Battin was unaware of the letter until sometime in 2004, during complainant's investigation of the case. (Factual Findings 31 and 32.)

Complainant argues that "the [Political Reform] Act does not allow a candidate to distance himself from actions taken on his behalf by employees and consultants of the candidate and/or his controlled committee" and concludes, "Under the Act, the Stone letter was Respondent Battin's letter." The only legal authority cited by complainant on this point is California Code of Regulations, title 2, section 18427. Regulation 18427 pertains to "Duties of Treasurers and Candidates with Respect to Campaign Statements." "Campaign statement" is a term of art, and the items required to be included in campaign statements are set forth in the Government Code section 84211. Complainant does not assert that the Stone letter was a "campaign statement," but attempts to extend the duties of treasurers and candidates with respect to campaign statements into a generalized obligation on Battin's part to oversee and be bound by the actions taken on his behalf by employees and consultants, specifically fundraiser Stone. Regulation 18427 does not have such a broad effect, and complainant cites no other authority in support of its argument.

Battin's intent to run, or not to run, for re-election does not turn on a letter sent without his knowledge or authorization. Stone's July 12, 2003 letter did not demonstrate Battin's intent on that date (much less in April 2001) to run for re-election in 2004.

7. Complainant asserts, "Respondents' acceptance of clearly earmarked contributions in lieu of returning them to his contributors clearly evinces Respondent Battin's ongoing intent to run for reelection." The earmarks are out-of-court statements, by individuals not subject examination under oath, asserted to establish that Battin intended to run for re-election to the Senate.

The Friends of Jim Battin account received numerous contributions that included references to Battin's "re-election," "next primary election," "election campaign," "2004 primary election campaign for re-election to the State Senate," etc. (Factual Finding 33.) It may be that some of his contributors genuinely believed they were contributing to a

campaign to re-elect Battin in the 2004 elections. It is also possible that the contributors were mistaken, misinformed, confused, or made clerical errors when making political contributions. That is suggested, for example, by the declaration of attorney John Kelly Astor and the letter sent by Colmac Energy. No contributor was called to testify at the hearing, however, and the circumstances – including the contributor’s knowledge and belief – surrounding any particular earmark are unknown.

Other contributors may have thought they were supporting “[Battin’s] Senate campaign for the March 5, 2002 Primary Election” or Battin’s “2002 General Election” campaign. Another addressed Battin as “Assemblyman Battin” and enclosed a contribution “for your efforts in the State Assembly.” Battin also received correspondence referring to him as Jim “Batton.” Those references do not demonstrate Battin’s intent to run in the 2002 elections, to run for the Assembly, or to change his name. Similarly, the contributor references to the 2004 elections do not establish Battin’s intent to run in those elections.<sup>2</sup>

8. Complainant argues, “Respondents’ *receipt* of contributions earmarked for Respondent’s future election independently triggered his obligation to file a statement of intention to be a candidate.” (*Italics in original.*) This argument is difficult to understand, since it posits that the filing of a statement of intention to be a candidate after the receipt of contributions complies with the requirement in Government Code section 85200 that the statement of intention be filed “[p]rior to the . . . receipt of any contribution.” As complainant’s sole witness, LuzMaria Bonetti, testified, it is when a candidate “decides to run for office” that he or she must submit a statement of intention to the Secretary of State. That is what Battin did in September and October 2003. The obligation to file the statement of intention is not triggered by third party conduct.

9. Complainant attempted to establish Battin’s intent through the Riverside Press Enterprise article, the 2001 golf tournament invitation, Diane Stone’s July 13, 2003 letter, and the earmarks that accompanied various contributions to the Friends of Jim Battin. None of those established Battin’s intent to run for re-election.

To the contrary, the evidence established that Battin did not decide to run for re-election until September 2003. Battin testified that he was interested in running for Congress if Representative Mary Bono decided to challenge Senator Barbara Boxer, and that he did not decide to run for re-election to state Senate until September 2003, after Bono decided not to run against Boxer. Battin’s testimony was credible, consistent, and not undermined under cross-examination. Battin’s testimony, moreover, was corroborated by his campaign

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<sup>2</sup> Citing Government Code section 85319 (allowing candidates to return contributions) and California Code of Regulations, title 2, section 18531 (return of excessive contributions), complainant asserts Battin could have returned contributions earmarked for the 2004 elections. That may be so, but that Battin did not return the contributions is not probative of Battin’s intent, or lack of intent, to run for re-election to the Senate in the 2004 elections. Moreover, the large majority of the contribution checks were payable to the Friends of Jim Battin, despite any earmarks that may have accompanied them. (Factual Finding 34.) The parties stipulated that pre-Proposition 34 committees like the Friends of Jim Battin were not subject to Proposition 34’s contribution limits.



manager Kimberly Glassman, and by fundraiser Diane Stone. Susan Swatt's testimony about the uncertainty in early 2001 about Proposition 34's effect on pre-Proposition 34 committees was credible, uncontroverted, and further corroborated respondents' contentions. Finally, the November 15, 2001, Riverside Press Enterprise news article provided additional support for respondents' case.

Thus, complainant did not establish that Battin failed to timely file his statement of intention to be a candidate for Senate in the 2004 primary and general elections as alleged in Count 1 of the accusation. Complainant has not established that Battin or the other respondents violated Government Code section 85200.

10. Pursuant to the parties' stipulation, it is determined that the violations alleged in the Counts 1 through 45 and 51 through 61 of the accusation are not legally and factually valid.

11. The evidence did not establish that the contributions to the Friends of Jim Battin made by the Twenty-Nine Palms Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the San Manuel Tribal Administration were to support Battin's Senate re-election campaign. (Factual Findings 38, 39, and 40.) Counts 46, 47, and 48 of the accusation are not legally and factually valid.

12. The evidence did not establish that the Friends of Jim Battin's or the Taxfighters for Jim Battin's semi-annual campaign statements for the January 1 through December 31, 2003, reporting period failed to properly report \$164,500 in contributions. (Factual Findings 41 and 42.) Counts 49 and 50 of the accusation are not legally and factually valid.

13. The evidence did not establish any of the violations of Political Reform Act alleged in the accusation.

#### ORDER

The accusation against respondents James F. Battin, Jr., Friends of Jim Battin, Taxfighters for Jim Battin, Ravelle Lyn Greene, and James W. Trimble is dismissed.

DATED: August 10, 2006

  
STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings